

**TENNESSEE BOARD OF PHARMACY  
MARCH 19 - 20, 2002  
ROOM 160 - DAVY CROCKETT TOWER  
NASHVILLE, TENNESSEE**

**BOARD MEMBERS PRESENT:**

Alan Corley, President  
Forrest Parmley, Vice President  
Barbara McAndrew, Public Member  
Robert Shutt, Member  
Reggie Dilliard, Member  
Julie Frazier, Member  
Paula Hinson, Member

**STAFF PRESENT:**

Kendall Lynch, Director  
Cecil Ross, Legal Counsel  
Martha Agee, Board Administrator  
John Beauregard, Pharmacist Investigator  
Terrence Cannada, Pharmacist Investigator  
Harry Fuqua, Pharmacist Investigator  
Richard Hadden, Pharmacist Investigator  
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, March 19, 2002, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 10:30 a.m. CST by Dr. Alan Corley, President. Dr. Corley announced the Board had attended a committee hearing at the legislature at 9:00 a.m. CST regarding the Controlled Substance Recordkeeping Act.

Director Kendall Lynch introduced 4th year University of Tennessee student, Ms. Renee Adams, who is participating in the Tennessee Interdisciplinary Health Policy Program.

**RECIPROCAL EXAMINATION**

The Jurisprudence Examination was administered to thirty-eight (38) applicants, beginning at 10:00 a.m. CST on Tuesday, March 19, 2002. The examination was administered by Pharmacy Board Investigators. All of the applicants successfully completed the examination, were interviewed by the Board and approved for licensure. On the following dates, reciprocal candidates were administered the Jurisprudence Exam in the Board office and successfully completed the examination:

Tennessee Board of Pharmacy  
March 19 - 20, 2002

March 4, 2002 (1) candidate  
April 2, 2002 (1) candidate  
April 8, 2002 (1) candidate

### **SCORE TRANSFER/NAPLEX JURISPRUDENCE EXAMINATION**

The Jurisprudence Examination was administered to one (1) Score Transfer examinee, one (1) NAPLEX examinee, and two (2) reinstatement examinees in Room 640 of the Davy Crockett Tower at 10:00 a.m. CST on Tuesday, March 19, 2002. The examination was administered by the Pharmacy Board Investigators. All of the applicants successfully completed the Jurisprudence Examination. On the following dates, NAPLEX and foreign graduate examinees were administered the Jurisprudence Examination at the Board office and successfully completed the exam.

February 4, 2002 (1) NAPLEX  
February 6, 2002 (2) Foreign Graduates  
March 4, 2002 (1) NAPLEX  
April 2, 2002 (1) Foreign Graduate  
and (1) NAPLEX

### **APPROVAL OF THE MINUTES**

The minutes of the **January 15 - 16, 2002** board meeting were presented and reviewed by the Board. Dr. Alan Corley mentioned on page 26 that the word “complaint” should be reflected as “compliant”. Dr. Paula Hinson motioned to **accept the minutes with the noted correction**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

### **CONSENT ORDERS**

Tennessee Board of Pharmacy  
March 19 - 20, 2002

**#200103444**  
**CVS PHARMACY #3725**  
License #405  
837 Tusculum Boulevard  
Greeneville, TN 37743

Legal counsel, Cecil Ross, presented the Consent Order whereas CVS Pharmacy #3725 was in violation of Rule 1140-2-.02 (5) relevant to the ratio of pharmacy technicians to pharmacists. The pharmacy was assessed a civil penalty in the amount of \$500. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**SCOTT BARZ, D. PH.**  
9711 Hawkdale Lane  
Knoxville, TN 37922

Cecil Ross, legal counsel, presented a Consent Order for Reinstatement of License for Dr. Scott Barz. Dr. Robert Shutt motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**#200207184**  
**RICHARD M. CALLIS, D. PH.**  
115 Manor Way, Apt. F  
Louisville, TN 37777

Cecil Ross, legal counsel, presented a Consent Order for Reinstatement of License for Dr. Richard Mark Callis. Dr. Paula Hinson motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**JEFFREY CASEY, D. PH.**  
2310 Ashford Drive  
Chattanooga, TN 37421

Tennessee Board of Pharmacy  
March 19 - 20, 2002

A Consent Order for Reinstatement of Dr. Jeffrey Casey's license was presented to the Board by legal counsel, Cecil Ross. Mrs. Barbara McAndrew motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. Dr. Paula Hinson recused herself. The motion carried.

**DONALD W. EVANS, D. PH.**  
2011 Richard Jones Road  
Nashville, TN 37215

Legal counsel, Cecil Ross, presented a Consent Order for Revocation of License as Dr. Evans voluntarily surrendered his license due to chemical dependency. Dr. Paula Hinson motioned to **accept** the Consent Order; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

**JANET M. HARTMAN, D. PH.**  
1715 Delwood Circle  
Greeneville, TN 37745

Cecil Ross, legal counsel, presented a Consent Order for Reinstatement of License as Dr. Hartman has accepted the terms outlined in the Consent Order. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

**GARY N. LUSTER, D. PH.**  
7780 Buck Ridge Cove  
Cordova, TN 38018

A Consent Order for Reinstatement of License was presented by legal counsel, Cecil Ross, for Dr. Gary Luster. Dr. Paula Hinson motioned to **accept** the Consent Order; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

**BUFORD B. NEELY, JR., D. PH.**  
15051 N. Big Hill Road  
Gulfport, MS 39503

Cecil Ross, legal counsel, presented a Consent Order for Revocation of License for Dr. Buford Neely,

Tennessee Board of Pharmacy  
March 19 - 20, 2002

who voluntarily surrendered his license due to chemical dependency. The Consent Order was returned to the legal office in October, 2001, was misplaced and appears to be in the proper form. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Paula Hinson. All were in favor and the motion carried.

**#200102361**

**ROGER A. SMITHSON, D. PH.**

49 Fairview Lane  
Woodbury, TN 37190

Legal counsel, Cecil Ross, presented a Consent Order whereas Dr. Roger Smithson was in violation of Board of Pharmacy Rule 1140-2-.01, as he was filling and refilling invalid prescriptions prepared by a veterinarian who is not authorized to prescribe medications for human beings. Dr. Smithson was assessed a civil penalty of \$600 and suspension of license for one (1) year, except for a period of seven (7) days, which shall be stayed for good behavior. Dr. Paula Hinson motioned to **accept** the Consent Order; seconded by Mrs. Barbara McAndrew. Dr. Julie Frazier recused herself. The motion carried.

## **WAIVERS**

**MESHAL AL-MUTAIRI, D. PH.**

P. O. Box 87125  
Riyadh 11642  
Saudi Arabia

Dr. Meshal Al-Mutairi is requesting a waiver of Rule 1140-5-.01 pursuant to the “live” ACPE continuing education requirement. Dr. Al-Mutairi is currently residing in Saudi Arabia and is unable to obtain the live continuing education hours but has thirty-nine (39) non-live ACPE hours. Dr. Robert Shutt motioned to **approve the waiver request for the “live” hours for this license renewal cycle only**; seconded by Dr. Reggie Dilliard. Mrs. Barbara McAndrew was out of the room. The

Tennessee Board of Pharmacy  
March 19 - 20, 2002

motion carried.

**TERESA GRISHAM BROWN, D. PH.**

USA Medical Department Activity, Heidelberg  
USA Health Clinic, Stuttgart  
Ancillary Services, Pharmacy  
Stuttgart, GM APO AE 09131

Dr. Teresa Brown is requesting a waiver of Rule 1140-5-.01 relevant to the “live” ACPE continuing education hours due to her husband receiving orders to relocate to Germany. Dr. Brown was scheduled to attend a seminar in May, 2002. Dr. Robert Shutt motioned to **approve the waiver of the “live” continuing education hours for this license cycle**; seconded by Dr. Reggie Dilliard. Dr. Paula Hinson recused herself and Mrs. Barbara McAndrew was out of the room. The motion carried.

**JAMES R. DENTON, D. PH.**

111 Cassie’s Trail  
Calhoun City, MS 38916

Dr. James R. Denton is requesting a waiver of the Board of Pharmacy Rule 1140-5-.01 relevant to the “live” continuing education hours as being ACPE approved. Dr. Denton is requesting the Board to approve the 2002 Mid-Winter Meeting sponsored by the Mississippi Pharmacist Association for four (4) hours of live continuing education. Dr. Paula Hinson motioned to **permit Dr. Denton to be licensed** using the continuing education option he presented. Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

**JOHN TAYLOR, D. PH.**

Corporate Compliance Officer  
**SECURE PHARMACY PLUS and  
PHARMACY SERVICES, INC.**  
416 Lindsay Polk Drive #515  
Franklin, TN 37064

Tennessee Board of Pharmacy  
March 19 - 20, 2002

Dr. John Taylor is requesting a waiver of Rule 1140-3-.14 (12) relevant to Dr. Steve Burkes being the pharmacist in charge at more than one (1) location. Secure Pharmacy Plus is a closed operation and only deals with supplying correctional institutions and Pharmacy Services, Inc., furnishes specialty drugs for HIV, etc. Both of these pharmacies use an automated unit. **Dr. Paula Hinson motioned to accept the request for temporary approval until two (2) pharmacists are available for PIC.** Dr. Reggie Dilliard seconded the motion. **Dr. Robert Shutt motioned to amend the motion to grant for a six month period and will need to request another waiver from the Board should a pharmacist not be hired.** Dr. Paula Hinson seconded the amendment to the motion. Dr. Julie Frazier recused herself. The motion carried.

**TRICIA JENNEWEIN, D. PH.**

32 Wheatstone Drive  
Jackson, TN 38301

Dr. Tricia Jennewein is requesting a waiver of Rule 1140-5-.01 (1) relevant to the live ACPE continuing education requirement to be effective for the next renewal cycle in August, 2004. Dr. Jennewein's husband has accepted an overseas assignment in Belgium. Mrs. Barbara McAndrew motioned to **table the request**, seconded by Dr. Robert Shutt. All were in favor and the motion carried. Director Kendall Lynch will inform Dr. Jennewein that the request was premature.

**MS. BEVERLY A. BURGESS**

Partner/Operations Manager

**TERRY D. MOORE, D. PH.**

**RESPIRATORY PLUS**

307 John Hunter Hwy., St. D  
Elora, TN 37328

Ms. Beverly A. Burgess, partner and operations manager of Respiratory Plus, is requesting a waiver

Tennessee Board of Pharmacy  
March 19 - 20, 2002

of Rules 1140-1-.12 (3) (d) and (e), relevant to the square footage and hot and cold running water.

Dr. Terry Moore is requesting a waiver of Rule 1140-3-.14 (12) relevant to the pharmacist in charge provision at more than one (1) location. Respiratory Plus only dispenses Albuterol and Ipratropium. Dr. Terry Moore is currently the pharmacist in charge at Huntland Drugs. Dr. Robert Shutt motioned to **approve both of the waiver requests**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

**THEADORE LYONS, II, PHARM. D.**

3924 Glenroy Drive  
Memphis, TN 38125

Dr. Theadore Lyons is requesting a waiver of Board of Pharmacy Rule 1140-3-.14 (12) regarding being pharmacist in charge at more than one (1) location. Dr. Lyons is currently the PIC at Kroger Pharmacy #428 and would like to establish a pharmacy practice associated with a dental office. Dr. Robert Shutt motioned to **deny** the waiver request; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried. The Board asked Dr. Kendall Lynch to express their concerns of working sixty-three (63) hours a week.

**PEYTON N. ROBERTS, D. PH.**

P. O. Box 651  
Belfry, KY 41514

Dr. Peyton Roberts is currently licensed in Kentucky and is requesting consideration to reciprocate to Tennessee. The Kentucky Board of Pharmacy requires that a pharmacist be actively practicing for one (1) year before they are allowed to reciprocate. Dr. Robert Shutt motioned to **accept** the request to reciprocate; seconded by Dr. Paula Hinson. All were in favor and the motion carried.



Tennessee Board of Pharmacy  
March 19 - 20, 2002

**KATHY POLSTON, D. PH.**

P. O. Box 23  
Albany, KY 42602

Dr. Kathy Polston is requesting a waiver of Rule 1140-5-.01 relating to the “Live” ACPE continuing education hours as she was unaware of the change in the law. Dr. Polston is currently enrolled in classes to obtain her MBA, which the Board did not consider to fall under Rule 1140-5-.01 (2). Dr. Paula Hinson motioned to **allow Dr. Polston to renew her license with the requirement that she obtain the additional fifteen (15) Live CE’s within six (6) months.** Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

**LINDA K. DEVORE, D. PH.**

104-A Highland Park  
Glasgow, KY 42141

Dr. Linda Devore appeared before the Board to discuss disciplinary actions taken against her Kentucky license. Director Kendall Lynch advised the Board that Dr. Devore is a reciprocal candidate for the State of Tennessee and pursuant to Tennessee Code Annotated §63-10-505 (7), it states whereas the Board is vested with the power and authority to place on probation, suspend, revoke or refuse to issue or renew any license if the applicant “has had the license to practice pharmacy suspended or revoked by another state for disciplinary reasons.” Dr. Lynch informed the Board that in January, 1990, Dr. Devore signed an Agreed Order with the Kentucky Board of Pharmacy for the illegal use of marijuana. In 1994, a urine screen tested positive for opiates and there was no prescription on file. Dr. Devore was placed on five years probation, fined \$1,000 and required to have an addiction evaluation conducted. In 2000, Dr. Devore did not complete the HIV requirement for

Tennessee Board of Pharmacy  
March 19 - 20, 2002

continuing education. After Dr. Devore's discussion, Dr. Alan Corley asked for a motion to deny reciprocity. There was no motion made. **Dr. Corley stated Dr. Devore could continue with the reciprocity process.**

## **LEGAL REPORT/COMPLAINTS**

### **OLD COMPLAINTS**

- 1) L99-PHR-RBS-199900093 and**
- 2) L99-PHR-RBS-199900095**

Two complaints arising out of the same matter. Pharmacist A and Pharmacist B were President and Chairman of the Board, respectively, of a pharmaceutical corporation. They were indicted in federal court on various charges of diverting pharmacy benefit money under TennCare and Medicaid to their own use. They entered an agreement with the United States and the Attorney General of Tennessee by which they both pled guilty to one misdemeanor count of Federal Health Care Program Fraud and agreed to pay \$1,300,000 to the United States and \$700,000 to the State of Tennessee, plus investigation costs to the Tennessee Bureau of Investigation. Under the terms of the agreement, both are to be excluded for fifteen years from all federal health care programs. The Court accepted this plea and sentenced both defendants to one year of probation, including 4 months of house arrest. Adherence to the financial terms of the settlement was made a condition of probation.

*Previous complaints:* One (administratively closed) for Pharmacist A; None for Pharmacist B.

**Recommendation:** TWO-YEAR SUSPENSIONS on both, with one year stayed during good behavior. Note: The terms of the plea agreement prohibit the imposition of any civil penalty.

Dr. Paula Hinson motioned to **table complaint numbers 199900093 and 199900095 until the next meeting**. Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

### **3)L01-PHR-RBS-200101757**

Police answered a domestic violence call to respondent's house. He was irrational and belligerent, produced a handgun, and then shot several times at the officer, damaging his patrol car. He was arrested and charged with attempted murder, assault on a police officer and resisting arrest. He was either acquitted by reason of insanity or found incompetent to stand trial (the documents conflict).

Tennessee Board of Pharmacy  
March 19 - 20, 2002

Either way, he was confined in the Middle Tennessee Mental Health Institution for three months. At discharge, he was diagnosed with Bipolar mental disorder, with possibility of future relapse. The DA confirms that no prosecution of him is planned. He is asking a waiver of live CE hours due to his hospitalization.

*Previous complaints:* None.

**Recommendation: Informal conference** to show cause why the Board should not consider that he has "exhibited an incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, confidence and safety to the public." Defer discussion of waiver request until that time.

Dr. Forrest Parmley motioned to **appear for an Informal Conference**; seconded by Dr. Reggie

Dilliard. All were in favor and the motion carried.

#### **4) L01-PHR-RBS-200102806**

Considered at the July 2001 board meeting. A Board inspector found this DPH working on a expired license, the DPH having paid his fee but failed to submit CE with his renewal application. The application itself was almost two months late. The Board accepted counsel's recommendation for a civil penalty for \$400 (\$100 per month of unlicensed practice). Respondent asked Board to reconsider based on accompanying letter. This file was mislaid for a time.

**Recommendation: Affirm original penalty.**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Paula Hinson. All were in favor and the motion carried.

#### **5) L01-PHR-RBS-200103090**

Originally presented at the November, 2001 Board meeting. Complainant, eight months pregnant, presented respondent pharmacy with a Rx for Prenate. It was mistakenly filled with the anti-depressant drug Parnate, which she took for some 30 days before discovering the error. The Rx slip from the doctor could easily have been mistaken for Parnate. The complainant told the Director in a phone conversation that she had not been counseled. The store's counseling log bears her signature for the date of the misfill, but contains no statement as to whether counseling was accepted or offered. During the investigation of this complaint, it was discovered that there had been a change in PIC at the store, of which the Board was never advised. Apparently it cannot be determined with certainty who was the pharmacist on duty when the Rx was picked up.

The original recommendation, agreed to by the Board, was:

PIC: Letter of Reprimand and \$250 civil penalty for the misfill

Both pharmacists: \$250 civil penalties for failure to counsel (since DPH on duty cannot be ascertained, let both pay).

Store: \$250 civil penalty for failure to counsel

\$50 civil penalty for failure to notify Board of change in PIC.

On recommendation of staff counsel, additional inquiry was made into the extent of counseling and the identity of the DPH on duty at the time the Rx was picked up. The DPH on duty has now been positively identified, and the store has responded based on the accompanying letter of the company's attorney.

**Recommendation:** Modify original penalty to assess civil penalty for failure to counsel only against DPH on duty. Affirm original penalty in all other respects. The requirement for counseling on a new Rx is not satisfied by the patient's signature on a form indicating that she has either accepted counseling or declined it. Particularly in a case as obviously dangerous as this, if the patient declines counseling, the store should decline to fill the Rx.

Dr. Reggie Dilliard motioned that **all original penalties remain, but remove the civil penalty for the pharmacist who was not on duty at the time the medication was picked up.** Dr. Julie Frazier seconded the motion. Dr. Forrest Parmley recused himself. The motion carried.

#### **6) L01-PHR-RBS-200104477**

Presented at the November 2001 board meeting. Complainant alleged that his Rx for OxycontinIR 5 mg. ( a Schedule II controlled substance) was given to another person by mistake. From the responses, it appeared that what happened was this: the complainant's wife brought in his Rx, whereupon some kind of insurance problem arose and the Rx was set aside. Later that day a different customer (whose first name was the same as the complainant's surname) came in to pick up his Rx. The pharmacist on duty confused him with the complainant and told him that the insurance company would not pay. Upon hearing this, the second customer asked for his Rx back, was given the complainant's Rx, and left. The error was discovered when the complainant's wife returned to pick up his medicine. For reasons not entirely clear from the response, the prescribing physician refused to reissue the Rx when contacted. The second customer who actually picked up the Rx was never located.

The Board voted to accept counsel's recommendation for a Letter of Instruction to the PIC and a \$200 civil penalty for the DPH who made the mistake. The DPH asks that the Board reconsider and submits the accompanying letter in explanation.

**Recommendation: Deny request to reconsider; reaffirm original penalty.**

Dr. Paula Hinson motioned to **deny the request to reconsider, let the original action stand.** Dr.

Reggie Dilliard seconded the motion. Dr. Forrest Parmley voted “no”. The motion carried.

### **NEW COMPLAINTS**

#### **1) L02-PHR-RBS-200105393**

A routine inspection revealed this DPH working on a license that had expired four (4) months earlier. He admitted the violation and apologizes. He renewed his license promptly after the inspection and was not deficient in CE.

*Previous complaints:* None.

**Recommendation: Civil penalty of \$400, and 6 additional hrs. of CE within one year.**

Dr. Robert Shutt motioned to **accept counsel’s recommendation;** seconded by Dr. Paula Hinson.

All were in favor and the motion carried.

#### **2) L02-PHR-RBS-200105496**

Complainant had a Rx for Alprazolam refilled at a hospital pharmacy. He received at least ten (10) tablets of Clonazepam by mistake, of which he ingested eight (8). He experienced problems with speech and vision, palpitations, tremors, nausea, shortness of breath and diarrhea. He went to the ER, where he discovered the error. The pharmacy does not deny the error, but points out that it was discovered by a count the same evening and that efforts to contact the patient were unsuccessful. The patient went to the police in the belief that the misfill was not an accident but rather an attempt by his estranged wife (an employee of the hospital) to poison him. However, his wife was not involved in refilling the Rx.

*Previous complaints:* None for either the store, the PIC or the DPH who did the refill.

**Recommendation: Letter of Instruction to DPH.**

Dr. Robert Shutt motioned to **accept counsel’s recommendation;** seconded by Dr. Paula Hinson.

All were in favor and the motion carried.

**3) L02-PHR-RBS-200105500**

Complaint by a physician whose Rx for Inderal for his patient was filled with Medrol. Patient took the medicine for 30 days and experienced swelling and dysphagia. The DPH, a floater, admits the misfill occurred and has no real explanation. The Rx is poorly written and could have been misread. The log indicates that the patient declined counseling.

*Previous complaints:* None for DPH  
Store-2

**Recommendation: Letter of Instruction.**

Dr. Paula Hinson motioned to **accept counsel's recommendation** to issue a Letter of Instruction; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

**4) L02-PHR-RBS-200105503**

Complainant alleges that he was given medication belonging to another person with the same name; that on another occasion she was shorted ten (10) tablets on a Rx for Allegra. On a third occasion it is alleged that Rxs for Pepcid and Premarin, filled at the same time, were put in the wrong bottles, and that when the DPH was contacted about it she was rude and defensive. The DPH denies being rude and defensive. There is no evidence concerning the alleged shortage or the bottle switch. The complainant refused to bring the bottles into the store when asked.

*Previous complaints:* None for DPH; three for store.

**Recommendation: Dismiss for lack of evidence.**

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Paula Hinson.

All were in favor and the motion carried.

**5) L02-PHR-RBS-200105544**

During a scheduled inspection, the board's inspector observed a non-certified tech taking telephone orders for Rxs. On inquiry, it was discovered that this had happened four (4) times that day. The response indicates that the DPH on duty was not familiar with the store's voice mail system, so he let the tech retrieve the voice mail messages. Before he could listen to them, they were accidentally deleted. He verified the Rxs after the fact. This appears to be an isolated incident.

*Previous complaints:* None

**Recommendation: Letter of Instruction to PIC (about tech's instructions) and DPH.**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**6)L02-PHR-RBS-2000105626**

Complaint alleges that his Rx for Zocor was filled with Lipitor, which he took because he thought Lipitor was the generic name for Zocor. He alleges that he became very ill and has been taking no medicine for two months. In response, the PIC notes that the patient was a TennCare recipient who changed his insurance program. His new program's formulary did not include Zocor without prior approval through the prescribing MD's office. Thus, when the patient presented his Rx for Zocor, the pharmacist contacted the MD, who changed patient's Rx to Lipitor. The patient was counseled on the situation and received an information sheet. Later that month the patient returned with a new Rx from his MD for Zocor, stating that the Lipitor had made him sick. He was given a 14 day supply pending approval of Zocor by the new plan. Patient returned about 2 weeks later but the Zocor Rx had not been approved because of financial problems.

*Previous complaints:* None, for either DPH or store.

**Recommendation: Dismiss.** The problems with the Rx were not the store's fault. The DPH appears to have done all he could.

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Mrs. Barbara

McAndrew. All were in favor and the motion carried.

**7) L02-PHR-RBS-200105630**

Complaint alleges that the store mistakenly gave her Rx for Flexiril and Fioricet to another patient, and that the complainant missed work because she didn't get her medicine. The mistake apparently did occur. A tech called out the complainant's name, and no one answered. The tech remembered that one of the people present had a daughter named S, the same first name as the complainant's (a very common one.) The tech asked this person if the medicine was meant for her daughter, and she said yes. The error was discovered when the complainant came by to pick up her medicine, when she angrily demanded that her Rx's be returned.

*Previous complaints:* DPH--none.  
Store--One (dismissed).

**Recommendation: Letter of Instruction to PIC.**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**8)L02-PHR-RBS-200105631**

Complainant, an RN who works in quality control at a nursing home, states that a Rx for Plavix arrived from the respondent's pharmacy with the wrong dosage instructions. The error apparently occurred because the pharmacy uses the sig code abbreviation "30" for the dosage "1-2 tablets qid for pain". 30 also happened to be the quantity of tablets for this Rx, and the number was apparently entered in the wrong field. No patient was overdosed before the error was discovered.

*Previous complaints:* None for Store or Dph.

**Recommendation: Letter of Instruction to DPH;** use of this code should be discontinued.

Mrs. Barbara McAndrew motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**9) L02-PHR-RBS-200105838**

Forwarded to the Board by the TennCare Fraud unit. Complainant alleges that employees of two pharmacies have verbally abused her because she is a TennCare recipient, and that on another occasion she was given another patient's medication and that one of the DPHs has lied to the complainant's mother on three occasions. The responses indicate that the patient's doctor asked that her Rxs for Ultram be filled only at a third pharmacy, and that more than once she attempted to have her Rx refilled too soon and became upset at the refusal. All deny that they were abusive to her or lied to her mother. The charge about the misidentification is not specific enough to be evaluated.

*Previous complaints:* None, for any store or DPH involved.

**Recommendation: Dismiss.**

Dr. Robert Shutt motioned to **dismiss** the complaint; seconded by Dr. Paula Hinson. All were in favor and the motion carried.

**10) L02-PHR-RBS-200105842**

Complainant asked for a refill of his 100 tabs of Cartia capsules and was told it was too early. He



went home and found the record of his last refill, which was for only 30 tabs. He then called the store, was told by a Ms. Costa that he could come pick up the remaining 70 tablets, which he did. He observed the pharmacist on duty, whom he considered responsible for the alleged mistake, and confronted him and showed him the receipts, apparently expecting some kind of apology. Instead the pharmacist, believing that some of the previous transactions had been incorrectly billed, began asking how many tablets patient had been taking. The patient resented this inquiry, and the encounter degenerated into a bitter argument with the DPH ultimately ejecting the patient from the store. The DPH, supported by two technicians, says that patient's manner throughout the encounter was belligerent, and that attempts to discuss the problem with him were unsuccessful.

*Previous complaints:* None, for DPH or store.

**Recommendation: Dismiss.** It is impossible to tell whether the patient's attitude made an amicable resolution of the problem impossible. This was basically a customer service problem rather than a violation.

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

#### **11) L02-PHR-RBS-200006153**

During a regular inspection, two CS-II Rx's were observed that lacked a physician's signature. DPH admits the error, which apparently resulted from an oversight; the Rx's had been faxed to the store without a signature. (This was an infusion pharmacy).

*Previous complaints:* Store--one (dismissed)  
PIC--one (misfill; LOI)  
DPH on duty--one (counselling, in another state; \$200)

**Recommendation: Letter of Instruction to DPH on duty.**

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Paula Hinson.

All were in favor and the motion carried.

#### **12) L02-PHR-RBS-200206248**

A complaint about the high price of Fosamax. The director has already written the complainant a letter informing her that the Board has no jurisdiction over pricing.

**Recommendation: Dismiss.**

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**13) L02-PHR-RBS-200206250**

Complainant is from the daughter of a nursing home patient. It is alleged that the pharmacy has denied her family "freedom of choice"; that the pharmacy arbitrarily adds an insurance service fee to each Rx, and that they have been overcharged for a certain medicine. Response indicates that the overcharge did occur, but was a simple billing error, since corrected; that the pharmacy does assess a \$3.50 service fee on third party insurance charges; and the pharmacy denies denying anyone freedom of choice. The family is apparently unfamiliar with the specialized interrelation between pharmacies, nursing homes and insurance companies.

*Previous complaints:* None, against either DPH or pharmacy.

**Recommendation: Dismiss.**

Dr. Paula Hinson motioned to **accept counsel's recommendation**; seconded by Mrs. Barbara McAndrew. Dr. Julie Frazier recused herself. The motion carried.

**14) L02-PHR-RBS-200206255**

Complainant alleges that she paid for her Rx's in cash when they were eventually covered by her insurance company, but that the pharmacy refused to discuss a refund with her. She also alleges that she was treated rudely. She believes the pharmacy consciously intended to defraud her. Respondent pharmacy is part of a corporation and is not authorized to write checks to customers. The problem apparently originated when the insurance company rejected one of patient's complaint, apparently because of an incorrect DOB. She then elected to pay cash. The pharmacy, on its own initiative, contacted the insurance company later to find out if the problem had been corrected, and discovered that it had. They then tried to reach the patient for a refund, but she had changed her address and phone number and so they could not reach her until she contacted them, at which time she accused them of trying to cheat her. She ultimately did come to the store and did receive her refund.

*Previous complaints:* None, for store or DPHs.

**Recommendation: Dismiss.**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

Tennessee Board of Pharmacy  
March 19 - 20, 2002

## **DIRECTOR'S REPORT**

### **2002 DELEGATE'S CERTIFICATE - NABP'S 98th ANNUAL MEETING**

The National Association of Boards of Pharmacy's 98th Annual Meeting will be held on May 18 - 22, 2002 in Phoenix, Arizona. Mrs. Barbara McAndrew motioned for Dr. Paula Hinson to serve as Delegate and Dr. Reggie Dilliard to serve as Alternate Delegate. Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

### **NABP - PHARMACY TECHNICIAN CERTIFICATION BOARD (PTCB)**

Effective January 1, 2002, the National Association of Boards of Pharmacy (NABP) will join the Pharmacy Technician Certification Board (PTCB) on the national certification program for pharmacy technicians. NABP will work with the state boards of pharmacy to encourage the acceptance of the PTCB certification program as a recognized assessment tool for pharmacy technicians.

### **MULTI-STATE PHARMACY JURISPRUDENCE EXAM (MPJE)**

The NABP office in Illinois will conduct three (3) sessions in April, June and September, 2002, for state boards to attend to review approximately 3,000 questions for the MPJE for applicability to state laws. Director Kendall Lynch suggested one board member and one investigator attend. Dr. Paula Hinson and Dr. Ralph Staton will attend the meeting on April 11 - 14, 2002.

**<http://www.state.tn.us/commerce/pharmacy>**

Director Kendall Lynch showed to the board members an illustration of how the pharmacy board's updated web site will appear. Dr. Lynch congratulated Ms. Kolleen Jeffrey for doing such a fine job.

### **JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS**

Tennessee Board of Pharmacy  
March 19 - 20, 2002

**(JCAHO)**

Director Kendall Lynch advised that Board that JCAHO was adamant about pharmacist reviewing all medications prior to the patient receiving.

**JEANNE EZELL, D. PH.**  
**BLOUNT MEMORIAL HOSPITAL**  
907 E. Lamar Alexander Parkway  
Maryville, TN 37804

Dr. Kendall Lynch informed the Board that Blount Memorial Hospital has implemented a new procedure to expedite the patient discharge process by utilizing a photocopy of the medication administration record (MAR) for the purpose of a discharge prescription. The Board has asked Dr. Lynch to draft a letter enumerating the Board's thoughts and problems associated with the MAR.

**ADJOURNMENT**

Dr. Alan Corley adjourned the Board of Pharmacy meeting at 4:15 p.m. CST on Tuesday, March 19, 2002.

**RECONVENED**

The Board of Pharmacy reconvened on Wednesday, March 20, 2002, at 9:00 a.m. CST in Room 160 of the Davy Crockett Tower. President Alan Corley called the meeting to order. All members were present with the exception of Dr. Robert Shutt who will be arriving late.

**MICHAEL L. GREENE, D. PH. - PETITION TO MODIFY TERMS AND CONDITIONS OF  
CONSENT ORDER**

5059 Stapleton Road  
Morristown, TN 37813

Dr. Michael L. Greene appeared before the Board along with his attorney, Paul Whetstone to petition for a modification of the terms and conditions of his Consent Order.

Legal counsel, Cecil Ross, asked Dr. Greene to explain his absence on Saturday, March 16, 2002 at Greene's Discount Pharmacy. Prior to discussion, legal counsel, Cecil Ross advised that he had spoken to the Board regarding the investigation and that no member of the board will be recused. Dr. Greene stated that he was called in for a drug screen and was at the doctor's office when he was notified that his wife's brother was involved in a traffic accident. Dr. Greene stated he contacted a tech identified as Betty, who was not at the pharmacy and told her not to release any prescriptions. Dr. Greene advised Betty to try and contact another pharmacist but one could not be located.

Investigator Ralph Staton witnessed the technicians filling prescriptions and closed the pharmacy.

Dr. Greene is requesting (1) the reinstatement of the pharmacist-in-charge privileges; (2) the requirement for the twelve step meetings to be lifted; and (3) the perpetual drug screens.

Director Lynch stated the pharmacist-in-charge provision was eligible for reinstatement after May 16, 2002. Dr. Greene stated that he completed treatment program and attended an additional year in the aftercare program.

Dr. Greene stated he had missed Caduceus meetings due to nose surgery. Dr. Greene considers AA/NA meetings to be religious functions and wishes to discontinue attending the program due to religious beliefs.

Dr. Greene's immediate family is his support network. Dr. Greene would like to be able to travel to Mexico, where he has a business adventure, but has been unable since signing the contract.

Legal counsel, Cecil Ross, stated that due to the constitutional issue of prayer, of which he was not aware, he is not prepared to give the Board an opinion.

After board discussion, Dr. Robert Shutt motioned to **reinstate the PIC privileges to be active on**

**May 17, 2002.** Dr. Reggie Dilliard seconded the motion. Dr. Forrest Parmley voted “no”. The motion carried.

On the petition to change the drugs screen program, there was no motion.

On the petition to reduce the Caduceus twelve step meetings, Dr. Robert Shutt motioned to **table the petition to change the meeting requirements until the May 15 - 16, 2002 board meeting.** Dr.

Reggie Dilliard seconded the motion. Dr. Paula Hinson suggested as an option to change the meeting area from Knoxville, Tennessee to Kingsport, Tennessee. Dr. Forrest Parmley would like for Dr.

Greene to furnish documentation of attending the meetings. All were in favor and the motion carried. President Alan Corley mentioned that several of these issues should have been resolved with TPRN.

Mr. Paul Whetstone inquired if the changes are accepted by TPRN, could the agreement be reached without an appearance. Legal counsel, Cecil Ross, advised if a agreement is reached with TPRN, to furnish Director Kendall Lynch or myself with documentation reflecting this change.

**BRENDA POWELL, D. PH.**  
**MURFREESBORO, TN**

Dr. Brenda Powell is requesting a waiver of the five (5) year requirement pursuant to Rule 1140-1-.07 (3) (c) relevant to the NAPLEX examination by letter dated January 21, 2002. Director Kendall Lynch informed the Board that Dr. Powell had her license revoked on January 28, 1997 due to chemical dependency. In October, 1998, Dr. Powell was convicted of a Class D Felony involving theft over \$1,000. Dr. Powell was sentenced to the workhouse for two years, all stayed with probation. Dr. Powell had requested that the record be expunged but was denied. Dr. Paula Hinson motioned to **deny** the waiver request as it was premature; seconded by Dr. Julie Frazier. All were in favor and the

Tennessee Board of Pharmacy  
March 19 - 20, 2002

motion carried.

### **RECOMMENDED GUIDELINES FROM THE LTC SOCIETY FOR THE USE OF CONTROLLED SUBSTANCES IN E-KITS FOR LTCF'S**

Director Kendall Lynch suggested that these guidelines be referred to the Ad Hoc Rules Committee for appropriate action.

### **TENNESSEE PHARMACY LAWBOOK**

Legal counsel, Cecil Ross, advised the Board that the rules need to be placed in final format to submit to the Secretary of State's Office.

### **CANDIDATES FOR NABP POSITIONS**

Dr. Paula Hinson would like to discuss prospective candidates at the May 15 - 16, 2002 board meeting.

### **ADJOURNMENT**

Dr. Alan Corley adjourned the board meeting at 11:20 a.m. CST on Wednesday, March 20, 2002.

Respectfully submitted,

Alan Corley, President

Kendall M. Lynch, Director